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DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 24, 162, 163, and 178

USCBP-2012-0017

CBP Dec. 13-16

RIN 1515-AD88

United States-Colombia Trade Promotion Agreement

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security;
Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to the U.S. Customs and Border Protection (CBP) regulations which were published in the **Federal Register** on September 26, 2012, as CBP Dec. 12-16, to implement the preferential tariff treatment and other customs-related provisions of the United States-Colombia Trade Promotion Agreement.

DATES: Effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE
FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Background**

On November 22, 2006, the United States and Colombia signed the United States-Colombia Trade Promotion Agreement (“CTPA” or “Agreement”), and on June 28, 2007, the Parties signed a protocol amending the Agreement. On October 21, 2011, the President signed into law the United States-Colombia Trade Promotion Agreement Implementation Act (the “Act”), Pub. L. 112-42, 125 Stat. 462 (19 U.S.C. 3805 note), which approved and made statutory changes to implement the CTPA.

On September 26, 2012, CBP published CBP Dec. 12-16 in the **Federal Register** (77 FR 59064) setting forth interim amendments to implement the preferential tariff treatment and other customs-related provisions of the CTPA and the Act. Please refer to those documents for further background information.

The majority of the CTPA implementing regulations set forth in CBP Dec. 12-16 and adopted as final in this document have been included within Subpart T of Part 10 of the CBP regulations (19 CFR Part 10). However, in those cases in which CTPA implementation is

more appropriate in the context of an existing regulatory provision, the CTPA regulatory text has been incorporated into an existing Part within the CBP regulations. CBP Dec. 12-16 also sets forth a number of cross-references and other consequential changes to existing regulatory provisions to clarify the relationship between those existing provisions and the new CTPA implementing regulations.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on September 26, 2012, CBP Dec. 12-16 provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule. The prescribed public comment closed on November 26, 2012. CBP received no comments on CBP Dec. 12-16.

Conclusion

After further review of the matter, and in light of the fact that no comments were submitted in response to CBP's solicitation of public comment, CBP has determined to adopt as final, with the changes described below, the interim rule published in the **Federal Register** (77 FR 59064) on September 26, 2012.

The changes in this document are set forth below:

- Amend § 10.3007(a) to clarify, as per Article 4.17.2 of the CTPA, that an importer that claims preferential tariff treatment for a good imported into the United States under § 10.3003(b), based on either the importer's certification or its knowledge, must maintain, for a minimum of five years after the date of importation of the good, all records and documents

“necessary” to demonstrate that the good qualifies for preferential tariff treatment under the CTPA. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.3003(b) based on the certification issued by the exporter or producer must maintain, for a minimum of five years after the date of importation of the good, the certification issued by the exporter or producer.

- Amend § 10.3011(a) to clarify that a post-importation claim may be filed by paper or by the method specified for equivalent reporting via an authorized electronic data interchange system;

- Amend § 10.3013(b)(1), which incorrectly lists subheading 8704.10 twice. The first reference to that subheading should, instead, refer to subheading 8702.10, HTSUS, as per section 203(n)(2)(A) of the Act;

- Amend § 10.3016(a) to clarify the rules for determining the value of a material for purposes of calculating the regional value content of a good as well as for purposes of applying the de minimis rules, by removing the exception language pertaining to § 10.3024;

- Amend § 10.3016(c)(1)(i) by removing the parenthetical text pertaining to “cost of freight,” as section 203(d)(2)(A) of the Act does not contain that language;

- Amend § 10.3027 by redesignating existing paragraph (c) as paragraph (d) and existing paragraph (d) as paragraph (c) to better reflect the order of the actions CBP will take, depending on the findings during and upon completion of the verification, and by replacing the word “Assistance” with the word “Action” in the heading text to existing paragraph (d), to reflect section 208 of the Act; and

- Amend § 10.3034(a) by adding a clarifying sentence, as per Article 2.6.3(b) of the CTPA, which states that the term “repairs or alterations” does not include an operation or process that transforms an unfinished good into a finished good.

Lastly, although this does not concern a correction to the regulatory text of Subpart T, it is noted that reference in the interim rule’s preamble (77 FR 59065) to “Subchapter XXI” of Chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is incorrect and should, instead, read, “Subchapter XVIII” to Chapter 99, HTSUS.

Executive Order 12866

This document is not a regulation subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

CBP Dec. 12-16 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined that the interim regulations involve a foreign affairs function of the United States pursuant to § 553(a)(1) of the Administrative Procedure Act (APA). Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 et seq.), do not apply. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in these regulations have previously been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651-0117, which covers many of the free trade agreement requirements that CBP administers, and 1651-0076, which covers general recordkeeping requirements. The collections of information in these regulations are in §§ 10.3003, 10.3004, and 10.3007. This information is required in connection with claims for preferential tariff treatment under the CTPA and the Act and will be used by CBP to determine eligibility for tariff preference under the CTPA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 0.2 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street, N.E., 10th Floor, Washington, D.C. 20229-1177.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE CBP REGULATIONS

Accordingly, the interim rule amending Parts 10, 24, 162, 163, and 178 of the CBP regulations (19 CFR Parts 10, 24, 162, 163, and 178), which was published at 77 FR 59064 on September 26, 2012, is adopted as a final rule with the following changes:

PART 10 - ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read, and the specific authority for new Subpart T is added, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

Sections 10.3001 through 10.3034 also issued under 19 U.S.C. 1202 (General Note 34, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 112-42, 125 Stat. 462 (19 U.S.C. 3805 note).

2. Section 10.3007(a) is revised to read as follows:

§ 10.3007 Maintenance of records.

(a) General. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.3003(b) based on either the importer's certification or its knowledge must maintain, for a minimum of five years after the date of importation of the good, all records and documents necessary to demonstrate that the good qualifies for preferential tariff treatment under the CTPA. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.3003(b) based on the certification issued by the exporter or producer must maintain, for a minimum of five years

after the date of importation of the good, the certification issued by the exporter or producer. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under Part 163 of this chapter.

* * * * *

3. In § 10.3011, paragraph (a) is amended by adding a sentence to the end to read as follows:

§ 10.3011 Filing procedures.

(a) * * * The post-importation claim may be filed by paper or by the method specified for equivalent reporting via an authorized electronic data interchange system.

* * * * *

§ 10.3013 [Amended]

4. Section 10.3013(b)(1) is amended by removing the language, “under 8704.10” and adding in its place the language, “under 8702.10”.

§ 10.3016 [Amended]

5. In § 10.3016:

a. Paragraph (a) introductory text is amended by removing the language, “Except as provided for in §10.3024, for” and adding in its place the word, “For”; and

b. Paragraph (c)(1)(i) is amended by removing the language, “(“cost of freight” includes the costs of all types of freight, including in-land freight incurred within a Party’s territory, regardless of the mode of transportation)”.

§ 10.3027 [Amended]

6. In § 10.3027:

a. Paragraph (c) is redesignated as paragraph (d) and paragraph (d) is redesignated as paragraph (c); and

b. The heading for newly redesignated paragraph (c) is amended by removing the word “Assistance” and adding in its place the word “Action”.

7. In § 10.3034, paragraph (a) is amended by adding a sentence to the end to read as follows:

§ 10.3034 Goods re-entered after repair or alteration in Colombia.

(a) * * * The term ‘repairs or alterations’ does not include an operation or process that transforms an unfinished good into a finished good.

Thomas S. Winkowski,
Acting Commissioner.

Approved: September 25, 2013.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

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